

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

EUGENE HOLMAN,

Plaintiff,

-against-

9:04-CV-1149  
(LEK/DEP)

JOHN EWANCIW, *et al.*,

Defendants.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on June 30, 2005 by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff, which were filed on July 22, 2005.

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation is **APPROVED** and **ADOPTED** in its

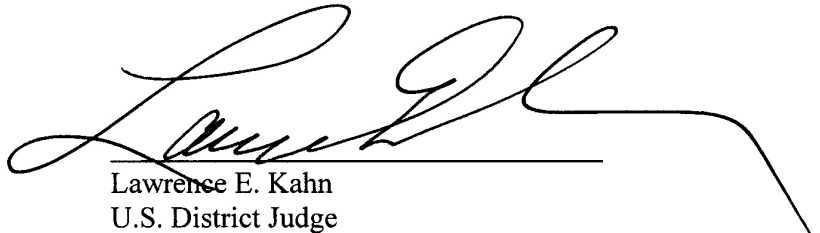
ENTIRETY; and it is further

ORDERED, that defendants' motion to dismiss plaintiff's complaint (Dkt. No. 15) be **GRANTED** in part, and that plaintiff's first, second and fifth causes of action, as well as all claims against defendants Connolly and State of New York, be **DISMISSED**, with leave to replead, but that defendants' motion otherwise be **DENIED**; and it is further

ORDERED, that the Clerk serve a copy of this order on all parties.

IT IS SO ORDERED.

DATED: August 25, 2005  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge